

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.38 of 2021

1. The State of Bihar, through the Principal Secretary, Water Resource Department, Sichai Bhawan, Patna.
2. The Engineer in Chief (Middle), Water Resource Department, Sichai Bhawan, Patna.
3. The Chief Engineer, Water Resources Department, Katari Hill Road, Gaya.
4. The Superintending Engineer, Water Resource Department, Water Ways Circle, Ghosi (Jehanabad).
5. The Executive Engineer, Water Resource Department, Water Ways Division, Ghosi (Jehanabad).

... .. Petitioner/s

Versus

M/s Anil Sharma, through its proprietor Mr. Anil Sharma, S/o Late Ram Chandra Singh, Resident of Mohalla - North Office, Para Road, GSP, P.S. - Doranda, District Ranchi - 834002.

... .. Opposite Party/s

Appearance :

For the Petitioner/s :	Mr. Vikash Kumar, Advocate
For the Opposite Party/s :	Mr. Manish Sahay, Advocate
	Mr. Anil Kumar Sinha, Advocate
	Mr. Siddharth Aditya, Advocate

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

10 05-09-2024

Re: I.A. No. 1 of 2021

This interlocutory application has been filed under Section 5 of the Limitation Act for condoning the delay of 865 days in filing the instant Civil Revision application.

2. This civil revision application has been filed under Section 13 of the Bihar Public Works Contracts Disputes Arbitration Tribunal Act, 2008 (in short 'Tribunal') against the award dated 04.11.2018 which was corrected vide order dated 17.12.2018 as 04.12.2018 passed in Reference Case No. 46 of



2015.

3. Learned counsel for the petitioners submitted that the petitioners' department being a public authority had to undertake advise and opinion before taking any steps towards compliance or challenge of the Award passed by the Tribunal. It is submitted that after passing of the award by the learned Tribunal, the original files were sent to the concerned Advocate for their advice and assistance in the matter on 25.04.2019. The concerned Advocate, who was handling the matter while shifting files from High Court office to his residential office, lost the said file. Several correspondence were sent by the petitioners to the concerned advocate. In absence of original files, no legitimate action could be taken. However, inquiries were made vide letter dated 20.09.2019, 04.02.2020, 15.12.2020, 13.01.2021 and 11.06.2021. Ultimately, the file was traced. Learned counsel for the petitioners submitted that there is delay of one year and 16 days in filing of the present civil revision application until 14.03.2020. It is submitted that due to pandemic of Covid-19, period of limitation in filing the appeal or revision was waived by the Apex Court from 15.03.2020 to 28.02.2022. The present civil revision application has been filed on 30.07.2021 during pandemic of Covid-19. The delay in filing



the present revision application is unintentional and inadvertent. There is no deliberate laches on the part of the petitioner rather some delay has occurred because of some necessary official formalities. The same took place due to reason beyond the control of the petitioner despite all efforts. The inordinate delay caused due to misplacement of the original file from the office of the concerned Advocate. The petitioners should not be penalized. Reliance has been placed on the judgment in the case of ***Sheo Raj Singh (d) through Lrs. & Ors. Vs. Union of India and Anr.*** reported in ***(2023) 10 SCC 531***.

4. Learned counsel for the petitioners submitted that it is unfortunate that a huge delay often acts as impediments in the way of filing the present civil revision application in time due to misplacement of original file and further delay on account of official formalities. In support of condoning the delay, the Hon'ble Apex Court has held in para 35 of the aforesaid judgment, which reads as under:-

“35.1. The law of limitation was founded on public policy, and that some lapse on the part of a litigant, by itself, would not be sufficient to deny condonation of delay as the same could cause miscarriage of justice.

35.2. The expression “sufficient cause” is elastic enough for courts to do substantial justice. Further,



when substantial justice and technical considerations are pitted against one another, the former would prevail.

35.3. It is upon the courts to consider the sufficiency of cause shown for the delay, and the length of delay is not always decisive while exercising discretion in such matters if the delay is properly explained. Further, the merits of a claim were also to be considered when deciding such applications for condonation of delay.

35.4. Further, a distinction should be drawn between inordinate unexplained delay and explained delay, where in the present case, the first respondent had sufficiently explained the delay on account of negligence on part of the government functionaries and the government counsel on record before the Reference Court.

35.5. The officer responsible for the negligence would be liable to suffer and not public interest through the State. The High Court felt inclined to take a pragmatic view since the negligence therein did not border on callousness.”

5. The Hon’ble Apex Court has also referred in its decision the case of ***State of Manipur & Ors. Vs. Koting Lamkang*** reported in ***(2019) 10 SCC 408*** and quoted paragraph nos. 7 & 8 of the said judgment which reads as under:-

“7. But while concluding as above, it was necessary for the Court to also be conscious of the



bureaucratic delay and the slow pace in reaching a government decision and the routine way of deciding whether the State should prefer an appeal against a judgment adverse to it. Even while observing that the law of limitation would harshly affect the party, the Court felt that the delay in the appeal filed by the State, should not be condoned.

8. Regard should be had in similar such circumstances to the impersonal nature of the Government's functioning where individual officers may fail to act responsibly. This in turn, would result in injustice to the institutional interest of the State. If the appeal filed by the State are lost for individual default, those who are at fault, will not usually be individually affected.”

6. The Hon’ble Apex Court considering the aforesaid judgment observed that an exercise of jurisdiction does, at times, call for liberal and justice oriented approach by the courts where certain leeway could be provided to the State. The hidden forces that are at work in preventing an appeal by the State being presented within the prescribed period of limitation so as not to allow a higher court to pronounce upon the legality and validity of an order on lower court and thereby secure unholy gains, can hardly be ignored.

7. Learned counsel for the petitioners further submits that the award passed by the Tribunal is without having



jurisdiction. The Tribunal has no jurisdiction to pass award in view of Clause 25 of Standard Bidding Document Procurement of Civil Works which was signed by the petitioners and opposite party and since the parties have agreed to resolve the dispute among them by taking recourse to the remedy in terms of provision of Arbitration and Conciliation Act, 1996. Clause 25 of the Act enumerated that in case of dispute arising out of the said agreement, the dispute shall be adjudicated or shall be conducted for arbitration in terms of the Act or any statutory modification or re-enactment thereof and rules made therein.

8. Per Contra, learned counsel for the opposite party submitted that the petitioners have failed to disclose actual period of delay and they have also failed to give explanation for condoning the delay in filing of instant civil revision application. It is submitted that the impugned award has been passed on 04.12.2018 and the present civil revision application has been filed on 30.07.2021 while the limitation expired on 04.03.2019. Therefore, 969 days delay has occurred in filing the present revision application against the award dated 04.12.2018. Learned counsel for the opposite party vehemently submitted that as per the case of the petitioners, the original file was sent to the concerned Advocate on 21.04.2019 after expiry of



limitation period. They have not disclosed about the delay period in between 04.12.2018 to 24.04.2019 i.e. about 141 days. It is further submitted that the ground for delay is that the original file was misplaced while shifting files from High Court office to residential office. The said statement is not acceptable because the petitioners have failed to disclose the name of Advocate, who was handling the matter and they have also failed to annex the correspondence which were sent by the petitioners to the advocate. It is submitted that from perusal of letter dated 20.09.2019, 04.02.2020, 15.12.2020 and 13.01.2021, it is quite clear that these letters do not disclose the case of the opposite party. It is apparent from the limitation petition that after expiry of statutory period of limitation, they have sent the file to the petitioners on 25.04.2019.

9. Learned counsel for the opposite party further submitted that after getting award dated 04.12.2018, opposite party had made available the copy of Award to the Executive Engineer (petitioner no. 5) on 21.12.2018 along with his representation dated 21.12.2018. It is submitted that petitioner no. 5 had got knowledge about the impugned Award. In spite of that file was sent to the concerned Advocate on 25.04.2019 after expiry of limitation for taking assistance and there is no



sufficient cause for condoning the delay mentioned in the interlocutory application.

10. Reliance has been placed on the judgment in the case of ***Postmaster General and Ors. Vs. Living Media India Limited And Anr.*** reported in ***(2012) 3 SCC 563***. The aforesaid decision has also been considered in the case of ***State of Bihar & Ors. Vs. Trimurti Construction.***

11. The Hon'ble Apex Court in the case of ***Postmaster General (Supra)*** has held that:-

“Neither the department nor the person in-charge has filed any explanation for not applying the certified copy within the prescribed period. The other dates mentioned in the affidavit which we have already extracted clearly show that there was delay at every stage.”

12. It is submitted that the petitioners have also failed to obtain certified copy of the said Award dated 04.12.2018 within prescribed period of three months and they have also failed to give proper explanation in this regard. From perusal of the records, it appears that the certified copy of the said Award dated 04.12.2018 was delivered to the petitioners on 24.03.2021 and challenge to the said award in present civil revision was made on 30.07.2021 which was registered on 31.07.2021. It is further submitted that this court in the case of ***State of Bihar &***



Ors. Vs. Kerns (Kems) Service Pvt. Ltd., has considered the period of limitation and condoning the delay of 175 days in filing the revision application and after detailed discussion, dismissed the civil revision application on the ground of delay and held that the petitioners have miserably failed to give any acceptable and cogent reason which would be sufficient to condone such a huge delay of 427 days in view of judgment of ***Postmaster General (Supra)*** and dismissed the limitation petition as well as civil revision as time barred.

13. Having considered the averments made in the interlocutory application and submission of the parties, it is apparent from the record that the impugned award was passed on 04.11.2018 which was corrected vide order dated 17.12.2018 as 04.12.2018 and the present revision application has been filed on 30.07.2021 which has been registered on 31.07.2021. The requisition for the certified copy of the award has been filed on 23.03.2021 and the copy of the same was supplied on 24.03.2021. The period of three months expired on 17.03.2019 from the date of correction of date of Award vide order dated 17.12.2018. The petitioners are trying to explain the delay from 25.04.2019 till filing of this revision application in his own way without any reason assigning with regard to delay from



17.12.2018 to 24.04.2019 and has not whispered a word or given explanation in limitation petition. Moreover, the petitioners failed to give sufficient cause for the delay in filing the civil revision application. The main thrust of the petitioners with regard to the jurisdiction of the Tribunal is that the award passed by the Tribunal having no jurisdiction is a nullity. This aspect has been considered by Hon'ble Apex Court in the case of ***M.P. Rural Road Development Authority Vs. LG Chaudhary Engineers and Contractors*** reported in ***(2018) 10 SCC 833***. The Hon'ble Apex Court in the said judgment has held that:-

“We do not express any opinion on the applicability of the State Act where award has already been made. In such case if no objection to the jurisdiction of the arbitration was taken at relevant stage, the award may not be annulled only on that ground.”

14. This question has already been raised in ***Civil Revision No. 69 of 2015 (The Managing Director, Bihar State Educational Infrastructure Development Corporation Ltd. And Anr. Vs. M/s Dayanand Prasad Sinha and Co. and Anr.)*** and its analogous cases. This court after considering the ***M.P. Rural Road Development Authority (Supra)*** has held that the objection with regard to the jurisdiction of the Tribunal after



passing of award is not sustainable.

15. From the above facts, it is crystal clear that there is no explanation for the delay from 17.12.2018 to 24.04.2019 as well as no acceptable reason much less convincing reason has been pleaded in the limitation petition. The petitioners have failed to give cogent explanation for delay of 865 days in filing the instant civil revision application.

16. In the case of *Postmaster General (supra)*, the Hon'ble court dismissed the application holding that the petitioners have miserably failed to give any acceptable and cogent reason which may be sufficient to condone the delay of 427 days.

17. Having regard to the discussion made herein above, the limitation petition bearing I.A. No. 1 of 2021 is dismissed having no merit in it.

18. Consequently, upon the dismissal of limitation petition, this civil revision application is also dismissed as time barred.

(Khatim Reza, J)

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